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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the First Amended Accusation
12 Against:

13 **LORAINÉ ELIZABETH MARTINEZ**
14 **AKA LORAINÉ ELIZABETH CORDOVA**
25590 Prospect Avenue, #39F
Loma Linda, CA 92354

15 **Registered Nurse License No. 691290**

16 Respondent.

Case No. 2013 72

OAH Case No. 2012090181

FIRST AMENDED ACCUSATION

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this First Amended Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered
22 Nursing, Department of Consumer Affairs.

23 2. On or about October 25, 2006, the Board of Registered Nursing issued Registered
24 Nurse License Number 691290 to Loraine Elizabeth Martinez, aka Loraine Elizabeth Cordova
25 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to
26 the charges brought herein and will expire on July 31, 2014, unless renewed.

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1 **JURISDICTION**

2 3. This First Amended Accusation is brought before the Board of Registered Nursing
3 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
6 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
7 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
8 Nursing Practice Act.

9 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
10 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
11 licensee or to render a decision imposing discipline on the license.

12 6. Section 2811(b) states:

13 Each such license not renewed in accordance with this section shall expire
14 but may within a period of eight years thereafter be reinstated upon payment of the
15 biennial renewal fee and penalty fee required by this chapter and upon submission
16 of such proof of the applicant's qualifications as may be required by the board,
17 except that during such eight-year period no examination shall be required as a
18 condition for the reinstatement of any such expired license which has lapsed solely
19 by reason of non-payment of the renewal fee. After the expiration of such eight-
20 year period the board may require as a condition of reinstatement that the applicant
21 pass such examination as it deems necessary to determine his present fitness to
22 resume the practice of professional nursing.

19 **STATUTORY PROVISIONS**

20 7. Section 482 of the Code states:

21 Each board under the provisions of this code shall develop criteria to
22 evaluate the rehabilitation of a person when:

23 (a) Considering the denial of a license by the board under Section 480; or

24 (b) Considering suspension or revocation of a license under Section 490.

25 Each board shall take into account all competent evidence of rehabilitation
26 furnished by the applicant or licensee."

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1 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
2 revoke a license on the ground that the licensee has been convicted of a crime substantially
3 related to the qualifications, functions, or duties of the business or profession for which the
4 license was issued.

5 9. Section 493 of the Code states:

6 Notwithstanding any other provision of law, in a proceeding conducted by a
7 board within the department pursuant to law to deny an application for a license or
8 to suspend or revoke a license or otherwise take disciplinary action against a person
9 who holds a license, upon the ground that the applicant or the licensee has been
10 convicted of a crime substantially related to the qualifications, functions, and duties
11 of the licensee in question, the record of conviction of the crime shall be conclusive
12 evidence of the fact that the conviction occurred, but only of that fact, and the board
13 may inquire into the circumstances surrounding the commission of the crime in
14 order to fix the degree of discipline or to determine if the conviction is substantially
15 related to the qualifications, functions, and duties of the licensee in question.

16 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
17 'registration.'

18 10. Section 2761 of the Code states:

19 The board may take disciplinary action against a certified or licensed nurse
20 or deny an application for a certificate or license for any of the following:

21 (a) Unprofessional conduct, which includes, but is not limited to, the
22 following:

23 ...

24 (f) Conviction of a felony or of any offense substantially related to the
25 qualifications, functions, and duties of a registered nurse, in which event the record
26 of the conviction shall be conclusive evidence thereof.

27

28 11. Section 2762 of the Code states:

 In addition to other acts constituting unprofessional conduct within the
 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
 person licensed under this chapter to do any of the following:

 (b) Use any controlled substance as defined in Division 10 (commencing with
 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
 device as defined in Section 4022, or alcoholic beverages, to an extent or in a
 manner dangerous or injurious to himself or herself, any other person, or the public
 or to the extent that such use impairs his or her ability to conduct with safety to the
 public the practice authorized by his or her license.

1 (c) Be convicted of a criminal offense involving the prescription,
2 consumption, or self-administration of any of the substances described in
3 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
4 record pertaining to, the substances described in subdivision (a) of this section, in
5 which event the record of the conviction is conclusive evidence thereof.

6 **REGULATORY PROVISIONS**

7 12. California Code of Regulations, title 16, section 1444, states:

8 A conviction or act shall be considered to be substantially related to the
9 qualifications, functions or duties of a registered nurse if to a substantial degree it
10 evidences the present or potential unfitness of a registered nurse to practice in a
11 manner consistent with the public health, safety, or welfare. Such convictions or
12 acts shall include but not be limited to the following:

13 (a) Assaultive or abusive conduct including, but not limited to, those
14 violations listed in subdivision (d) of Penal Code Section 11160.

15 (b) Failure to comply with any mandatory reporting requirements.

16 (c) Theft, dishonesty, fraud, or deceit.

17 (d) Any conviction or act subject to an order of registration pursuant to
18 Section 290 of the Penal Code.

19 13. California Code of Regulations, title 16, section 1445(b), states:

20 When considering the suspension or revocation of a license on the grounds
21 that a registered nurse has been convicted of a crime, the board, in evaluating the
22 rehabilitation of such person and his/her eligibility for a license will consider the
23 following criteria:

24 (1) Nature and severity of the act(s) or offense(s).

25 (2) Total criminal record.

26 (3) The time that has elapsed since commission of the act(s) or offense(s).

27 (4) Whether the licensee has complied with any terms of parole, probation,
28 restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section
1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

25 **COST RECOVERY**

26 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations of
28

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(November 25, 2011 Criminal Conviction for Driving Under the Influence of Alcohol and**
5 **for Driving Under the Influence of Alcohol With a Blood Alcohol Content of 0.08% or**
6 **Higher [0.23%] on May 14, 2011)**

7 15. Respondent is subject to disciplinary action under Code sections 490 and 2761(f) of
8 the Code in that Respondent was convicted of a crime substantially related to the qualifications,
9 functions, and duties of a registered nurse. The circumstances are as follows:

10 16. On or about November 25, 2011, in a criminal proceeding entitled *People of the*
11 *State of California v. Loraine Elizabeth Martinez, aka Loraine Elizabeth Cordova*, in the
12 Riverside County Superior Court, in Case No. RIM1112196, Respondent was convicted on her
13 guilty plea of violating Vehicle Code sections 23152(a) (driving under the influence of alcohol)
14 and 23152(b) (driving under the influence of alcohol with a blood alcohol content of 0.08% or
15 more [0.23%]), misdemeanors. Respondent admitted an enhancement pursuant to Vehicle Code
16 section 23578 (concentration of blood alcohol content of 0.15% or more).

17 17. As a result of the above conviction, the Court placed Respondent on three (3) years
18 summary probation and ordered her to serve 15 days in the Riverside County Jail, with 2 days
19 credit for time served. The Court also ordered Respondent to obey all laws, enroll in and
20 complete at her own expense an Electronic Monitoring Program, pay over \$2,000 in fines and
21 fees, not drive with any measurable amount of alcohol or drugs in her blood, or within six hours
22 of having consumed alcohol or drugs, if arrested for driving under the influence, to submit to any
23 blood, breath, or urine test as requested by arresting officers, not drive unless properly licensed
24 nor without insurance or valid registration, attend and satisfactorily complete a First Offender DUI
25 Program for 9 months (for having had a BAC of over 0.20%), and enroll in and complete a
26 MADD Victim Impact Panel session.

27 18. The circumstances that led to Respondent's conviction are that on May 14, 2011, at
28 approximately 2320 hours, California Highway Patrol Officers, while on routine patrol traveling
eastbound on SR-91 west of I-215 southbound, observed a gray Nissan Altima in the #4 lane

1 cross over the painted white line into the auxiliary lane. Officers observed that the vehicle
2 continued to drive in a serpentine manner occasionally crossing the painted white lines. Officers
3 activated the emergency lights to make an enforcement stop and the vehicle slowed and attempted
4 to stop on a narrow right shoulder. Officers instructed the driver (later identified as Respondent)
5 to exit the freeway by using a public address speaker. The vehicle complied and exited the
6 freeway and pulled into the Shell gas station at La Cadena. When officers made contact with
7 Respondent through the open driver side window, they asked Respondent if she had consumed
8 any alcoholic beverages, and Respondent replied, "Yes, three drinks." Officers noticed an odor
9 of an alcoholic beverage emitting from the interior of the vehicle. Officers asked Respondent for
10 her California driver's license and Respondent showed officers her nursing license and stated,
11 "Are you serious, I'm a nurse." Officers again asked Respondent for her California driver's
12 license and Respondent complied. Officers asked Respondent to exit her vehicle and walk to the
13 left front of their patrol vehicle and Respondent again stated, "Are you serious, I'm a nurse."
14 Respondent walked to the left front of the patrol vehicle and, while doing so, officers noticed she
15 had an unsteady gait. When speaking to Respondent, officers noticed the odor of an alcoholic
16 beverage emitting from her person. Officers noticed her eyes were bloodshot and watery, her
17 mouth dry and her speech slurred. Respondent failed field sobriety tests and was placed under
18 arrest for driving under the influence of alcohol and transported to Robert Presley Detention
19 Center where a blood sample was obtained at 0023 hours. Respondent was booked in the county
20 jail.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct - Use of Alcohol in a Manner Dangerous** 23 **or Injurious to Self or Others)**

24 19. Respondent is subject to disciplinary action under Code section 2761, subdivision (a)
25 on the grounds of unprofessional conduct as defined by Code section 2762, subdivision (b), in
26 that on May 14, 2011, she used alcohol to an extent or in a manner that was dangerous to herself
27 and the public, as set forth in paragraphs 15-18, above, which are incorporated here by reference.
28

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Conviction of an Alcohol Related Crime)**

3 20. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
4 on the grounds of unprofessional conduct as defined by Code section 2762, subdivision (c), in
5 that she was convicted of a criminal offense involving the consumption of alcohol, as set forth in
6 paragraphs 15-18, above, which are incorporated here by reference.

7 **DISCIPLINARY CONSIDERATION**


8 21. To determine the degree of discipline, if any, to be imposed on Respondent,
9 Complainant alleges that on or about January 3, 2005, in a prior criminal proceeding entitled
10 *People of the State of California v. Loraine Elizabeth Martinez*, in San Bernardino County
11 Superior Court, case number 2260524LM, Respondent was convicted on her plea of guilty for
12 violating Penal Code section 647(f), disorderly conduct: under the influence of alcohol/drugs on
13 October 22, 2004, a misdemeanor, which was disclosed on Respondent's application for licensure
14 with the Board.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Registered Nursing issue a decision:

- 18 1. Revoking or suspending Registered Nurse License Number 691290, issued to Loraine
19 Elizabeth Martinez, aka Loraine Elizabeth Cordova;
20 2. Ordering Loraine Elizabeth Martinez, aka Loraine Elizabeth Cordova to pay the
21 Board of Registered Nursing the reasonable costs of the investigation and enforcement of this
22 case, pursuant to Business and Professions Code section 125.3;
23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: OCTOBER 26, 2012

25 
26 LOUISE R. BAILEY, M.ED., RN
27 Executive Officer
28 Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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